1951

**File No.** O. Insurance / 51

Legal Department

A **BRANCH**

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**Subject:—** Opinions under the Insurance Act, 1938.

**File No.** O. Insurances / 51

Gen. 194 e.

13-A

# C O N T E N T S.

Legal Department File No. O. Insurance / 51.


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MR
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Office of the R.L.A.

If the State Government were to include the property and other risks of statutory corporations in their insurance fund, that fund will then be of the nature of an insurance business. However, exemptions from the provisions of the Insurance Act can be secured if the Central Government so orders and to such extent or subject to such conditions or modifications as are specified in that order in accordance with provisions of section 118(c). It is unlikely that the Central Government would grant an exemption in respect of the property of, or the risks applicable to, the State Road Transport Corporation in view of the proviso to sub-section (2) of section 41 of the Road Transport Corporations Act, 1950.

Id/- ( P.M.L.)

Remembrancer of Legal Affairs.

U.R. to F.D.No.328, dated the 5th January 1951.

R.D.P.
3/7/56

S.C.

Legal Department.

The F.D. desires the R.L.A. to a dvise on the question whether the inclusion of the different items of property specified in para. 2 of the F.D. office note at pages 7-8 ante would attract the provisions of the Insurance Act, 1938.

2. Whether the inclusion by Government of any of the properties mentioned by the F.D. in the Insurance fund would attract the provisions of the Insurance Act, 1938, will depend upon whether the properties belong to Government or not. So far as the properties mentioned at S.No. I in the F.D. note are concerned it appears that there would be no doubt that the inclusion of all the items from (a) to (t), both inclusive, in the Insurance fund would not make it an insurance business. Item (u) refers to museums, public wells, Dak and inspection bungalows for the use of which charges are levied. As stated above the test is not the power to levy charges, but ownership. The F.D. may, therefore, consider from this angle. Regarding the properties mentioned at S.No. II which are required for the normal administration of Government if the buildings in which Government offices are situate are owned by Government the risk in respect of them can be included in the Insurance Fund; if not it would be doing insurance business. The last item III pertains to properties vesting in the Court of Wards. Under the Bombay Court of Wards Act, 1905, such properties are under the control of the Court of Wards for the purpose of proper management during the minority of the words and all management charges are recoverable out of the estate. They cannot be deemed to be Government properties.

Id/-

management during the minority of the wards and all
management charges are recoverable out of the estate
They cannot be deemed to be Government porperties.

Id/-

Remembrancer of Legal Affairs.

U.R. to F.D.No. 5618, dated the 7th April 1951.

R.D.P.
3/7/56

S.C.

Legal Department.

Attention is invited to R.L.A.'s opinion Nos. 328, dated the 5th January 1951 and 5618 dated the 7th April 1951, For the reasons pointed out in the latter opinion, though the liability to insure the bungalow hired by the Dirstrict Judge, Sholapur, rest with the State Government the bungalow belongs to a private individual and if the Government pays towards the insurance fund maintained by them to meet the liability arising out of the lease, it appears that would still amount to Government doing insurance business and that course would not be legally feasibl unless exemption from the provisions of the Insurance Act, 1938, is obtained from the Central Government in accordance with the provisions of clause (c) of section 118 of that Act as inserted by Act, 47 of 1950.

Id/-

Additional Secretary to Government.

U.R. to F.D.No.14937, dated the 19th September 1950.

R.D.P.
3/7/56

S.C.

Office of the R.L.A.

The x question raised for consideration is whether evacuee property vesting in the Custodian can be the subject matter of insurance fund established by Government by G.R.,F.D.,No.3464/33 XIII, dated the 25th July 1951. Attention is invited to R.L.A's opinion No.328, dated the 5th January 1951, and Additional Secretary's opinion No.5618, dated the 7th April 1951. As pointed out in the latter opinion whether the inclusion of the evacuee property in the insurance fund would amount ~~is~~ to Government undertaking insurance business would depend upon whether or not the property belongs to Government. Under section 8 of the Administration of Evacuee Propety Act,1950, property declared to be evacuee property under section 7 shall be deemed to have vested in the purposes of the objects of the Act and for Facilitating its administration. That would not, however, make the property of the ownership of the Government. Moreover, as stated in the Rehabilitation Department note the administration of such property is carried on at the expense of the ~~xxxx~~ income derived therefarom. The case of such property would ~~xppexx~~ appear to be similar to that of properties vesting in the Court of Wards considered in the concluding portion of t he Additional Secretary's opinion No.5618, dated the 7th April 1951. It appears therefore that it would not be feasible to include evacuee property in the insurance fund established by Government.

Id/-
Remembrancer of Legal Affairs.

U.R. to F.D.No.17272,dated the 1st November 1951.

R.D.P.
3/7/56

5.C.

Statement of Facts.

In 1946-47, Government was sending considerable quantities of foodgrains by country crafts to verious places in the Province. The Bombay Steam Navigation Co.,Ltd., was the transport agent of Government for these shipments and one Shri Laxmidas Ramji was acting as the representative of the Bombay Steam Navigation Co. Government decided to effect insurance on these consignments and quotation were invited from the Insurance Companies.

In response to this invitation only three Companies quoted their rates and M/s. Vishwabharti Insurance Co. was one of them. It should be noted that this tender was not received direct from the Insurance Co. but it was submitted by M/s. Bombay Steam Navigation Co.Ltd., who in their letter dated 14th September 1946 wrote to the Chief Accounts Officer as follows:-

> "With reference to your letter dated 28th ultimo inviting lowest quotations for premia rates for the above insurance, we have to advise you that we shall be prepared to arrange for the insurance of tha above cargo on your account with M/s. Vishwabharati Insurance Co. Ltd., and the rates for such insurance will be as under
>
> XXXXXXX XXXXXXXX
>
> XXXXXXX XXXXXXXX
>
> The above rates are for insurance under usual country craft cover of F.P.A. and jettisoning.
>
> It will be appreciated tha the rates quoted by us are fairly competive and have been so indicated so that the entire work in connection with this insurance would be entrusted to us. We shall feel obliged if you will kindly favour us with the cent per cent. insurance of Government cargoes transported by country craft during the ensuing season."

Government found that the terms quoted on behalf M/s. Vishwabharati Insurance Co. were competitive and decided to accept the tender. On 3rd October 1946, a letter was accordingly addressed to the acceptance and the Company was requested to forward a letter of acceptance from the In-

the Insurance Co.

The Insurance Company duly accepted and by its letter dated 8th November 1946 informed the Chief Accounts Officer that they were agreeable to the insurance at the rates indicated and communicated by the Bombay Steam Navigation Co. and they further informed.

"We have further to advise you that we have appointed Shri Laxmidas Ramji as our Chief Agent to accept all these insurances of Government foodgrains by country crafts for the season 1946-47 and we have authorised him to sign and execute the policies, cover notes etc. as also to receive insurance premia on our behalf."

In the course of the season, it was noticed that the Insurance Co. did not meet a single claim of Government as and when communicated to them. Government therefore, forwarded a statement of outstanding claims to the Company of 4th September 1948 and after a reminder got a reply that the matter was being looked into. The amount of total claim communicated at that time was Rs.57,762-4-8.

While these claims were outstanding in February 1949, Shri Laxmidas Ramji presented a bill to Government amounting to Rs.42,196-5-0 in respect of insurance premia. As there were outstanding claim against the Insurances Co., Government asked Shri Laxmidas to adjust the claims and to remit the balance.

The claims were, however, not settled and when the Insurance co. was approached, it insisted upon prior payment of the x premia due. Government however, hesitated to pay the premia as the Grain Purchase Officer, who had also insured with the Co and had paid all his premia had not been able to

get a settlement of his claim against the Company amounting to Rs. 84,023-8-6. As the company was not meeting that claim, bona fides of the Company were doubted.

The Company was not, however, directly repudiating the claim. In their letter dated 17th May 1949, the Company expressed its anxiety to finalise the matter and requested the Director of Civil Supplies (Accounts) to furnish the necessary documents in support of the claim. In a further correspondence on 20-5-49, the Company requested payment of the outstanding premia and in a still further letter of requested payment of premia and furnishing of the x 14th June, the Company was informed that the Bombay Steam Navigation Company and the District Magistrate had supplied the necessary documents and that they were making complaints that the Company was not replying. The Company was also asked to settle the claim and remit the amount without any delay.

In the Company

As no settlement was arrived at the Civil Supplies Department addressed a letter to the Superintendent of Insurance for help in the matter. The Company informed the Superintendent that necessary documents were not supplied to them x and their premia were also not paid and hence they could not settle the claims. This information was passed on by the Superintendent to the Civil Supplies Department.

It appears that at that time some documents were laying with the Bombay Steam Navigation Co. and these were obtained and forwarded to the Insurance Co. The Company thereupon wrote to Government saying that they would settle their claim provided their premia were paid- Government being suspicious of the bona fides of the Company, paid a sum of Rs. 333-4-0 in respect of a few items and requested the company to settle the claim in respect of those ~~xxxxx~~ items only.

This was done as a test case. The Company, however,

informed that the amount had been credited to Government account and requested payment of the balance.

Government's claims are thus outstanding for a considerable time. The x civil Supplies Department is suspicious about the bona fides of the company and as the claims against ~~xkx~~ the Company are larger than the amount of the premia due the question for considerationx is whether a suit should be filed against the Company for realisation of the amount.

It is seen from the District Magistrate Ratnagiri's letter No.M.D.R/A.C/S.R-3, dt. 3-10-1950 that the claims in respect of three despatches were not preferred within 40 days from the date of the despatch but the insurance policies in respect of these despatches, except the despatch at item No. 5 were issued several months after the consignment was actually despatched and received. It is not know how this fact will affect the merits of the case. It may be noted, however, that in a recently reported ~~xx~~ decision in Ramji Karamsi vs. The Unique Motor and General Insurance Co. Ltd., 52 Bom. L.R.703, it has beenx held that <u>the condition in the policy of insurance that the claim should be made and proved within ~~fxrx~~ forty days of its date was not a condition precedent and meant only that the claim should be made with all</u> reasonable and due diligence. This decision is favourable to Government and the mere fact that the claim was not proved within 40 days ~~xx~~ may not ~~xrxxxxxwithxixxxx~~ invalidate Government's claim. Moreover, the Insurance Company has admitted Government's claim to the extent of Rs15,120-4-6 thus leaving a balance of Rs 42,642-0-2. The necessary documents were supplied after a lapse of 40 days except in one case.

R.D.P.
3/7/56

S.C.

No.12932.
Legal Department,
Bombay Castle (Bombay No.1),

13th August 1951.

To

M/s. Little and Co.,
Solicitors to the Government of Bombay,

Bombay.

Gentlemen,

Subject:- Claims against Vishwabharati Insurance Co.

With reference to your letter No. CG/13619 dated the 7th July 1951. I have the honour to forward herewith a brief statement of the facts of the above case in order to enable you to give opinion in the matter.

Papers of the case in 7 files accompany.

Yours faithfully,

Id/-

Additional Secretary to Government.

R.D.P.
3/7/56

S.C.

LITTLE & Co.
Solicitors & Notaries Public

Central Bank Building,
Bombay 1.

16th October, 1951.

No. CG/22963.

To
Secretary to the Government of Bombay,
Legal Department,
Bombay Castle,
Bombay. 1.

Sir,

Re Claim against Vishwabharati Insurance Co.Ltd.

We have the honour to refer the Additional Secretary's letter no.16073 of the 10th ist. and your department's previous reminders and to return herewith the 7 files forwarded with the RLA's letter to us no.1366 of the 22nd January 1951 asking for advice whether a suit can be filed against the above insurance co.

So far as we have been able to gather from perusal of these files there was a letter from the Chief Account Officer, Civil Supplies Department dated the 28th August 1948 inviting quotations for the insurance of Government food-grain cargoes in transit between certai ports by country craft for the season 1946-47. This letter unfortunately is not amongst the files herewith.

In response thereto the Bombay Steam Navigation Co. Ltd., on behalf of the Vishwabharati Insurance Co. Ltd., quoted certain rates of premia in its letter dated the 14th September 1946. This letter consitutes an offer.

The C.A.O.,C.S.D's reply of the 3rd October 1946 to the B.S.N.Co.Ltd. makes slight amendments in the rates of premia and asks for

1) confirmation from the above insurance co. direct and
2) the necessary agreement to be signed with the Food Controller in due course;

This letter of the 3rd October 1946 may therefore be regarded as a counter-offer. That counter-offer was, as we read the correspondence, accepted by the Vishwabharat Insurnace Co.Ltd's letter of 8th November 1946 addressed to the C.A.O.,C.S.D. and forwarded by the B.S.N.Co.Ltd' letter of 11th November 1946.

At this stage-if the above interpretation of the correspondence be accepted-there was brought into existence a floating contract of insurance the terms of which are to be gathered from the correspondence as supplemented by the ensuing course of business between the parties.

Thereafter the Food Controller, by letter dated 21s December 1946 addressed to the Vishwabharati Insurance Co. Ltd., purported to accept the terms offered by that company in its letter of 8th November 1948 and to impose specified new terms (particularly those in paragraphs 3,4,and 5). Whether this letter may be construed as a part of the general contract of insurance is doubtful and we observe that the files herewith contain no

written acknowledgment of it.

According to the course of business various valued voyage policies were issued by the insurers in respect of specified groups of shipments. These policies appera to have been issued from 1 to 3 months after the relevant dates of sailings. The files show that this delay was due to the time taken to collate and transmit the necessary information about shipments.

All these policies embody a printed condition in the following terms:

> "All claims and other matters relating to this insurance shall be made agreeable to the tenor of this policy but no claim will be admitted unless properly made and proved within 40 days from the date hereof."

As has been pointed out in the statement of facts which accompanied the Additional Secretary's letter to us no.12982 of the 13th August last, this particular clause has been the Subject of interpretation in the Bombay High Court in the case of Ramji Karamsi v the Unique Motor and General Insurance Co. Ltd. 52 BLR 703.

We would, however, draw attention to the passage at p.710 from the judgment of the Hon'ble Mr.Justice Bhagwati hereunder quoted, which shows that there was a very good reason applicable in the case of Ramji Karmsi and not applicable in the present case, why this clause should not be interpreted strictly as a

> "The policy was to ensure only for a period of 40 days from the loading of the vessel. If the loading of the vessel was to be a terminus a quo for the commencement of the risk under the policy, that would be no date April 24, 1943. Forty days therefrom would be June 4, 1943, so that the period of the policy was up to June 4, 1943, and the risk would be covered up to that date. If the country craft was lost or the goods were lost by one of the perils of the sea insured against even on June 3,1943 the assured will be entitled, if regard be had to this term, to have his claim registered and entertained by the defendants. But the term of the policy which has been relied upon by the defendants would mean that the claim must be formally made and proved by the assured within 40 days thereof, i.e. the policy which would, taking the date of the policy as April 21, 1943, bring this period of 40 days up to May 31, 1943. Even though the loss be incurred on June,3,1943, the because he would not have formally submitted and proved his claim by May 31,1943, which he ought to have done if his claim was to be a good claim, having regard to this term of the policy. A more absurd result could not possibly be conceived."

Assured would be without a remedy

Notwithstanding this distinction between the present claim of the Government and Ramji Karamsi case we think that reliance may be placed by the Government on the Hon'ble Mr. Justice Bhagwati's interpretation of the aforementioned condition requiring any claim to be made and proved within 40 days of the date of the policy.

Even if this condition were to be strictly interpretated as a condition precedent, we are of opinion that it may well have been waived by the Vishwabharati Insurance Co.Ltd's letters of the 17th and 20th May 1949 to the Director of Civil Supplies (Accounts) wherein the insurers asked for documents in support of these claims. Neither of these letter are found in the files herewith.

The A.L.A. in his opinion of the 17th August 1950 has already dealt with the question of the effect of the withholding of payment of premia against non-settlement of claims and pointed out that these matters though related are distanct and may be adjusted by mutual agreement.

We are of opinion that the Government should file a suit against the Vishwabharati Insurance Co. Ltd., But, the matter being complicated we think it would be adviaable that the Advocate-General or Senior counsel first be asked to express an opinion and, if appropriate, to draft the plaint.

We have the honour to be

Sir

Your most obedient servants.

Id/-

R.D.P.
3/7/56

S.C.

Legal Department.

A copy of the opinion of M/s. Little & Co. is forwarded herewith for taking further action in the matter.

Id/-

Additional Secretary to Government.

U.R. to F.C.,No.17543, dated the 5th November 1951.

R.D.P.
4/7/56

S.C.